

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2124**

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**Introduced by Assembly Member Lowenthal**

February 20, 2014

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An act to ~~amend Section 1001.50 of~~ *add Chapter 2.96 (commencing with Section 1001.95) to Title 6 of Part 2 of the Penal Code, relating to pretrial diversion programs criminal sentencing.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 2124, as amended, Lowenthal. Misdemeanor offenses: ~~pretrial diversion program.~~ *deferral of sentencing.*

Existing law authorizes a county to establish a pretrial diversion ~~programs~~ *program* for defendants who have been charged with a misdemeanor offense *and authorizes other diversion programs, including for defendants with cognitive developmental disabilities, defendants in nonviolent drug cases, and traffic violations.*

*This bill would authorize a judge in the superior court in the county in which a misdemeanor is being prosecuted, at his or her discretion, to defer sentencing a defendant who has submitted a plea of guilty or nolo contendere for a period not to exceed 24 months and to order the defendant to comply with terms, conditions, and programs, as specified. The bill would require the judge, at the end of the deferral period and if the defendant complies with all terms, conditions, and programs required by the court, to strike the defendant's plea and dismiss the action against the defendant. The bill would require the court to make a motion for entry of judgment and to sentence the defendant if the defendant reoffends or fails to comply with the terms, conditions, or programs ordered by the court.*

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 2.96 (commencing with Section 1001.95)  
2     is added to Title 6 of Part 2 of the Penal Code, to read:

3  
4                   CHAPTER 2.96. DEFERRAL OF SENTENCING  
5

6     1001.95. A judge in the superior court in the county in which  
7     a misdemeanor is being prosecuted may, at his or her discretion,  
8     defer sentencing a defendant who has submitted a plea of guilty  
9     or nolo contendere. Sentencing may be deferred for a period not  
10    to exceed 24 months and the judge may order the defendant to  
11    comply with terms, conditions, or programs that the judge deems  
12    appropriate based on the defendant's specific situation.

13    1001.96. (a) If the defendant, during the period of deferral,  
14    complies with all terms, conditions, and programs required by the  
15    court, then, the judge shall, at the end of the period, strike the  
16    defendant's plea and dismiss the action against the defendant.

17    (b) Upon successful completion of the terms, conditions, or  
18    programs ordered by the court, the arrest upon which sentencing  
19    was deferred shall be deemed to have never occurred. The  
20    defendant may indicate in response to any question concerning  
21    his or her prior criminal record that he or she was not arrested  
22    or granted deferred entry of judgment for the offense, except as  
23    specified in subdivision (c). A record pertaining to an arrest  
24    resulting in successful completion of the terms, conditions, or  
25    programs ordered by the court shall not, without the defendant's  
26    consent, be used in any way that could result in the denial of any  
27    employment, benefit, license, or certificate.

28    (c) The defendant shall be advised that, regardless of his or her  
29    successful completion of the terms, conditions, or programs  
30    ordered by the court pursuant to this chapter, the arrest upon  
31    which the judgment was deferred may be disclosed by the  
32    Department of Justice in response to any peace officer application  
33    request and that, notwithstanding Section 1001.95, this section

1 *does not relieve him or her of the obligation to disclose the arrest*  
2 *in response to a direct question contained in a questionnaire or*  
3 *application for a position as a peace officer, as defined in Section*  
4 *830.*

5 *1001.97. If, during the period of deferral, the defendant*  
6 *reoffends or fails to comply with the terms, conditions, or programs*  
7 *required by the court, then the court shall make a motion for entry*  
8 *of judgment and shall sentence the defendant as if deferral had*  
9 *not occurred.*

10 ~~SECTION 1. Section 1001.50 of the Penal Code is amended~~  
11 ~~to read:~~

12 ~~1001.50. (a) Notwithstanding any other law, this chapter shall~~  
13 ~~become operative in a county only if the board of supervisors~~  
14 ~~adopts the provisions of this chapter by ordinance.~~

15 ~~(b) The district attorney of each county shall review annually~~  
16 ~~any diversion program established pursuant to this chapter, and~~  
17 ~~the program shall not continue without the approval of the district~~  
18 ~~attorney. A person shall not be diverted under a program unless it~~  
19 ~~has been approved by the district attorney. This subdivision does~~  
20 ~~not authorize the prosecutor to determine whether a particular~~  
21 ~~defendant shall be diverted.~~

22 ~~(c) As used in this chapter, "pretrial diversion" means the~~  
23 ~~procedure of postponing prosecution either temporarily or~~  
24 ~~permanently at any point in the judicial process from the point at~~  
25 ~~which the accused is charged until adjudication.~~